

ELECTION

The Examiner, in the Office Action dated December 12, 2005, required election of one of the following species:

- “Species 1: represented by figure 2”;
- “Species 2: represented by figure 3”;
- “Species 3: represented by figure 4”;
- “Species 4: represented by figure 5”;
- “Species 5: represented by figure 6”;
- “Species 6: represented by figure 7”;
- “Species 7: represented by figure 8”;
- “Species 8: represented by figure 10”; and
- “Species 9: represented by figure 11.

No claim was identified as being generic between Species I and Species II.

In the event Applicants elected Species I, the Examiner required a further election to one of the following sub-species of:

- Species A, drawn to heating, Claims 2 and 6;
- Species B, drawn to a press forming method, Claims 3 and 7;
- Species C, drawn to ultrasonic working, Claim 4; and
- Species D, drawn to a ridgeline portion (Figure 3), Claims 8-12.

The Examiner states that “[c]urrently, it appears that at least claim 1 is generic.”

Applicants respectfully traverse the above election of species requirements as being improper and request withdrawal thereof.

Section 803 of the Manual of Patent Examining Procedure (MPEP) indicates that “there are two criteria for restriction between patentably distinct inventions” as follows (emphasis added) to wit:

Section 803 of the Manual of Patent Examining Procedure (MPEP) states, in part:

“If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions”

and

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).”

Applicants respectfully submit that identified Species 1-9 are properly presented in the same application and that no serious burden on the Examiner exists. The Examiner has not established that a separate field of search would be required for each of Species 1-9. More specifically, the Examiner has not identified the required field of search for each species, and has not shown that it would be necessary to search one of the species in places where no pertinent prior art to another species exists. Even if such plural species are, in fact, present in the application, the Examiner has not established that a search and examination of the entire

application can only be made with serious burden. Lacking a serious burden, the Examiner must examine the entire application on the merits, even though it may include claims directed to independent or distinct species. As such, the Examiner has not satisfied the two criteria for restriction or election as set forth in Section 803 of the MPEP and thus, the restriction and election of species requirements should be withdrawn and all of the claims examined together.


Notwithstanding the above discussion, Applicants, in order to fulfill their duty to reply to the election of species requirements, **hereby elect Species 1, which is represented by Figure 2. Claims 1 and 4-6 are readable on elected Species 1 of Figure 2.** Applicants, however, reserve the right to file a divisional application based on the non-elected inventions/species.

AUTHORIZATIONS

The Commissioner is hereby authorized to charge any additional fees which may be required for the timely consideration of this amendment, or credit any overpayment to Deposit Account No. 13-4500, Order No. 1948-4815.

Respectfully submitted,
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